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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/717,876	11/20/2003	Mark Gusek	20329	9375
25671	7590	04/05/2005	EXAMINER	
RICHARD E. BEE P.O. BOX 10544 COSTA MESA, CA 92627			HSIEH, SHIH YUNG	
			ART UNIT	PAPER NUMBER
			2837	

DATE MAILED: 04/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/717,876	GUSEK, MARK	
	Examiner	Art Unit	
	Shih-yung Hsieh	2837	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>11/20/2003</u> | 6) <input type="checkbox"/> Other: ____ |

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 4, 6, 15, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Korosh (2,785,596).

Regarding claim 1, Korosh discloses a musical shaker assembly comprising: a container (38) having located a plurality of hard pellets (col. 2, lines 68-69); and an elongated shaft (H) having a first end portion (the portion abut 38) attached to the container with the remainder of the shaft extending outward from the container (Fig. 1) the outward end shaft being shaped to fit into a stem holder (28) of a drum foot pedal mechanism (18).

Regarding claims 4, 6, and 16, Korosh discloses the claimed invention (col. 2, line 68-70).

Regarding claim 15, the claim claims prior art because the claim recited that the drum beater foot pedal mechanism is a commercially available on the market bass drum beater foot pedal mechanism.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2, 7, 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Korosh in view of Huth, III (5,377,575).

Regarding claim 2, Korosh discloses the claimed invention except that the container is a metal container.

Huth, III teaches a metal maraca (col. 3, line 61-64) for generating the desired sound. It would have been obvious to one having ordinary skill in the art to modify Korosh's assembly as taught by Huth, III to include the container being a metal container for the purpose of generating the desired sound.

Regarding claim 7, Korosh discloses the claimed invention except that the hard pellets are small pieces of metal.

See above and Huth, III's col. 3, lines 61-63.

Regarding claim 9, Korosh discloses the claimed invention except that the hard pellets are pieces of buckshot.

See above and Huth, III's col. 3, line 62.

5. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Korosh in view of Isackson (5,659,143).

Regarding claim 3, Korosh discloses the claimed invention except that the container is a plastic container.

Isackson teaches a plastic maraca (col. 1, lines 17-18) for easy and economic manufacture. It would have been obvious to one having ordinary skill in the art to modify Korosh's assembly as taught by Isackson to include the container being a plastic container for the purpose of providing easy and economic manufacture.

6. Claims 5, 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Korosh in view of Ayres (6,464,558).

Regarding claim 5, Korosh discloses the claimed invention except that the container is a closed metal can.

Ayres teaches metal can being used as a conventional maraca/noise maker (col. 1, lines 33-35) for common use. It would have been obvious to one having ordinary skill in the art to modify Korosh's assembly as taught by Ayres to include the container being a closed metal can for the purpose of being commonly used.

Regarding claim 8, Korosh discloses the claimed invention except that the hard pellets are metal BB's.

Ayres teaches a noise maker using BB's as the hard pellets (col. 4. line 43). It would have been obvious to one having ordinary skill in the art to modify Korosh's assembly as taught by Ayres to include the hard pellets being metal BB's for the purpose of being commercial available.

7. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Korosh in view of Liao (5,932,824).

Regarding claim 10, Korosh discloses the claimed invention except that the elongated shaft is a cylindrical metal rod.

Liao teaches a beater having an elongated shaft (10) being a cylindrical metal rod (Fig. 2) for rigidity. It would have been obvious to one having ordinary skill in the art to modify Korosh's assembly as taught by Liao to include the elongated shaft being a cylindrical metal rod for the purpose of providing rigidity.

8. Claims 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Korosh in view of Hoshino (4,346,638).

Regarding claim 11, Korosh discloses the claimed invention except that the elongated shaft is force fit through the body of the container in a central location on the container.

Hoshino teaches an elongated shaft (19) is force fit through a beater (18) in a central location on the beater for rigidity (Fig. 1). It would have been obvious to one having ordinary skill in the art to modify Korosh's assembly as taught by Hoshino to include the elongated shaft is force fit through the body of the container in a central location on the container for the purpose of providing rigidity.

Regarding claims 12-14, see above and Fig. 1 that shows the claimed features of the claims including securing means of a nut member.

9. Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Korosh in view of Beyer (5,044,250).

Regarding claim 17, Korosh discloses the claimed invention except that the hard pellets are a mixture of at least two different kinds of pellets.

Beyer teaches a drumstick producing maraca sound having pellets being a mixture of at least two different kinds of pellets (col. 3 lines 7-8) for varying sounds (col. 3, line 8). It would have been obvious to one having ordinary skill in the art to modify Korosh's assembly as taught by Beyer to include the hard pellets being a mixture of at least two different kinds of pellets for the purpose of varying sounds.

Regarding claim 18, see above.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shih-yung Hsieh whose telephone number is 571-272-2065. The examiner can normally be reached on 7:00-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Martin can be reached on 571-272-2107. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


SHIH-YUNG HSIEH
PRIMARY EXAMINER